

REMARKS

In response to the office action, Applicant has amended claims 1-6 and 8-13. Applicant has canceled claims 7 and 14 and has added new claims 15-20. The amendment to most of these claims has simply been to change the first word of the preamble of the claim from "A" to - -The - -.

The Examiner objected to the drawings under 37 C.F.R. 1.83(a) because they fail to show elements 56 as described in the specification. In response, Applicant is providing a replacement sheet 5 in which the element "56" has been identified in Figs. 7a and 7b. Applicant is also providing a marked-up copy of sheet 5 to indicate the numbering change.

The Examiner objected to the disclosure because of a number of minor informalities. Applicant has corrected the informalities as required by the Examiner.

The Examiner rejected claims 3, 7 and 14 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

With reference to claim 3, the Examiner stated that the phrase "an I-shaped open three sided channel member" is unclear. **In response**, Applicant has amended claim 3 by deleting the words "open three sided" from line 2 of the claim.

With reference to claim 7, the Examiner stated that this claim improperly claims a branch pipe/supply pipe. **In response**, Applicant has canceled claim 7.

With reference to claim 14, the Examiner stated that the claim improperly claims

a second garden stake support. **In response**, Applicant has canceled claim 14.

Applicant respectfully submits that these amendments to the claims have addressed the Examiner's rejections under 35 U.S.C. 112, second paragraph.

The Examiner has rejected claims 1, 2, 5 and 13 under 35 U.S.C. 102(b) as being anticipated by Bukky (U.S. Patent No. 6,823,814). In response, Applicant has amended claim 1 to include the limitation that a lowermost portion of the stake is adapted to engage and serve as a primary anchor to secure the stake support in a ground surface. Furthermore, claim 1 included the limitation that the open platform, which serves as the hammer point, is located directly above the lowermost portion. Applicant respectfully submits that Bukky does not disclose these features. Bukky discloses a reflective marker, of the type used to illuminate driveways. By contrast, the present invention is directed to a garden stake support. Clearly the two inventions are directed to separate areas of endeavor. Importantly the Bukky device includes the upright head member 12 attached to the shaft member 18. The reflective surfaces 14 are applied to this head member 12. The shaft member 18 is axially aligned with *primary* anchor spike 22. In this case it is the primary anchor spike 22 that forms the lowermost portion of the device, i.e., the portion that extends most deeply into the ground. The secondary anchor spike 24 in the Bukky device is connected to the primary anchor spike 22 by a cleat 25 and it would be this cleat 25 that serves as the hammer point for anchoring the stake in the ground. It can therefore be seen that in the Bukky device the hammer point is not located directly over the lowermost portion, as is required by claim 1 of the present invention. Fig. 1 of Bukky clearly shows that the secondary anchor spike 24 is considerably shorter than the primary anchor spike and,

in Applicant's opinion, this secondary anchor spike could not be used to support the marker. The Examiner has compared the secondary anchor spike of the Bukky citation with the lowermost portion of the stake of the present invention. We feel that this is an incorrect interpretation of the Bukky device. Clearly the Bukky device discloses that the main anchoring spike is axially aligned with the marker above ground (column 2, lines 59-61 and column 3, lines 19-23). Bukky's secondary spike serves only a secondary purpose in that it aids in preventing the primary anchor from rotating in the ground and prevents it from being blown around by wind (column 4, lines 57-63).

The stake support of the present invention, on the other hand, consists of a lowermost portion that is axially offset from the uppermost portion where the hammer point is located directly above the lowermost portion. Thus, the distinction can be made between the Bukky device, in which the portion of the device that extends above the ground is aligned with the main below ground anchoring point, and the present device, in which the above ground portion and the primary below ground anchoring portion are offset from one another.

The effect of this difference can be readily imagined in use. In the Bukky device striking the cleat member 25 will only exert a direct force on the secondary spike 24. For the most part the primary spike 22 will need to be secured in the ground without the assistance of any force applied to the cleat as this would be awkward to achieve in practice. Thus, the device will rely on a relatively easily penetrated ground surface for its operation. In the case of the present invention, on the other hand, the offset of the lowermost ground portion allows all of the force directed onto the hammer point 32 to

be transmitted to the primary anchor, i.e., to the lowermost portion and to assist in anchoring the stake support. This advantage is not disclosed or suggested by the Bukky citation.

Furthermore, Bukky teaches that the portion that extends above the ground is axially aligned with the main anchor, i.e., with the lowermost portion. However, Bukky's device is designed to retain what is likely to be a fairly light weight head 12 inasmuch as the head is simply a base onto which the reflective surfaces 14 are affixed. This would mean that if the teachings of Bukky were applied to a garden stake support, then the elongated stake that extends outwardly from the support would lie directly over the lowermost portion. Because of the elongated stake the support would be carrying and because of the potential loads that have to be carried by that stake, a Bukky-style stake support would have to be driven deeply into the ground to prevent it from falling over. This is difficult to accomplish because of the height of the stake involved and it is this very problem that Applicant's device has addressed (see page 2, lines 6-16 of Applicant's specification). Applicant therefore respectfully submits that Bukky teaches away from Applicant's invention and as such does not anticipate claims 1, 2, 5 and 13. Furthermore, anticipation requires that the reference disclose each and every limitation of the claim. Applicant respectfully submits that Bukky does not disclose a support that includes a lowermost portion that engages the ground surface and serves as the primary anchor to secure the stake support in the ground surface and that has an open platform directly above it serve as a hammer point. Bukky teaches that the hammer point is located in an offset position relative to the lowermost portion and is in fact above a secondary anchor. Applicant therefore respectfully submits that Bukky does

not anticipate claims 1, 2, 5 and 13 of the present application and requests that the rejection of these claims under 35 U.S.C. 102(a) be withdrawn. Applicant further requests that these claims be allowed.

The Examiner rejected claim 3 under 35 U.S.C. 103(a) as being unpatentable over Bukky in view of Blankemeyer et al (U.S. Patent No. 3,732,878).

The Examiner stated that Bukky discloses everything previously mentioned, but does not teach an I-shaped member where a first side element extends further and is longer than a second side element, and the lower end of the lowermost portion forms a point.

The Examiner stated that Blankemeyer et al, does teach these missing elements and that it would consequently be obvious to one of ordinary skill in the art to modify Bukky's stake to include a lowermost portion with an I-shaped member as taught by

Blankemeyer. **In response**, Applicant respectfully disagrees that Bukky discloses the present invention except for the I-shaped member. As argued above, Bukky teaches away from the present invention, therefore combining the teachings of Blankemeyer et al with those of Bukky would not be obvious to one of ordinary skill in the art. The device disclosed in the Blankemeyer citation is a variable tensioning stake having provision for a cam lock to allow a rope to be tensioned thereto. However, a close inspection of the citation shows that the impact surface 28 is aligned with the axis of the stake. Thus, the feature of an offset lowermost ground engaging and primary anchoring portion used to receive a hammer blow is not disclosed in the Blankemeyer citation.

Applicant submits that the features of the invention cannot be suggested from any combination of the features of Bukky and Blankemeyer. Applicant therefore respectfully requests that the rejection of claim 3 under 35 U.S.C. 103(a) be withdrawn. Applicant

respectfully requests allowance of this claim.

The Examiner rejected claim 4 under 35 U.S.C. 103(a) as being unpatentable over Bukky in view of Blankemeyer as applied to claim 3, and further in view of Jewett et al. As discussed with reference to the previous rejection, claim 3 is not obvious in light of the combination of teachings of Bukky and Blankemeyer. Jewett discloses using a jack-hammer 20 that is connected to a drive rod 18 to drive the anchor into the ground. Drive rod 18 is connected into a rounded opening in the body portion 11 and as can be seen from Figs, 2 and 3, that opening 11 extends along the longitudinal axis of the body. Jewett et al also does not suggest the feature of an offset lowermost ground engaging and primary anchoring portion used to receive a hammer blow, the reference again teaches the exact opposite, namely, that the hammer blow be delivered to a hammer point that is disposed along the longitudinal axis of the device. Applicant therefore respectfully submits that claim 4 is not obvious in light of the teachings of these three references and requests that the rejection of this claim be withdrawn and that the claim be allowed.

The Examiner rejected claim 6 under 35 U.S.C. 103(a) as being unpatentable over Bukky in view of Kleinhesselink (U.S. Patent No. 1,555,322). In response, Applicant has argued previously that Bukky does not disclose everything claimed in independent claim 1 of the instant application and that claim 1 is allowable over this reference. Furthermore, Bukky's primary anchor is anchor 20. Kleinhesselink discloses adding a hook to the primary anchor. Therefore modifying Bukky's device in accordance with Kleinhesselink's disclosure would simply mean that a hook would be added to the primary anchor 20 that is aligned with the uppermost portion. The

combined device would still lack an offset ground engaging and primary anchoring portion used to receive a hammer blow. Consequently, claim 6 of the present invention would not be rendered obvious simply because of the addition of a hook as taught by Kleinhesselink. Applicant therefore respectfully submits that claim 6 distinguishes over the prior art and is therefore allowable.

The Examiner rejected claim 7 under 35 U.S.C. 103(a) as being unpatentable over Bukky in view of Kleinhesselink. Claim 7 has been canceled with reference to the rejection under 35 U.S.C. 112, second paragraph.

The Examiner rejected claim 8 and 9 under 35 U.S.C. 103(a) as being unpatentable over Bukky in view of Fitzsimmons et al (U.S. Patent No. 5,752,349). In response, claims 8 and 9 are dependent from claim 1, and Applicant has previously argued that claim 1 is neither anticipated by the Bukky patent nor is it obvious in light of the disclosure of this reference. Fitzsimmons does not include any teaching or suggestion of a second anchor portion, nor does it teach or suggest the provision of an offset lowermost ground engaging and primary anchoring portion that is used to receive hammer blows to install the device in the ground. Consequently the combination of Bukky and Fitzsimmons does not teach or suggest the invention claimed in claims 8 and 9 of the instant application. Applicant respectfully requests withdrawal of the rejection of these claims and subsequent allowance of the same.

The Examiner rejected claim 10 under 35 U.S.C. 103(a) as being unpatentable over Bukky in view of Fitzsimmons as applied to claim 8 and further in view of Despino et al (D445,054). In response, Applicant submits that claim 10 is

allowable in that it is dependent from an allowable base claim. Other than notches cut into the base member and on the upper member, Despino's barricade post does not teach or suggest any other features which combined with Bucky and Fitzsimmons would render the claimed invention obvious to one of ordinary skill in the art. Despino's post appears to be of the sort that would rest on top of the ground and as such does not provide any additional disclosure as to lowermost and uppermost anchoring posts that are hammered into the ground surface, nor does it make any disclosures regarding and places on the device for striking the device with a hammer. Applicant therefore submits that claim 10 is not obvious in light of the disclosures of these three patents and requests that the claim be allowed.

The Examiner rejected claims 11 and 12 under 35 U.S.C. 103(a) as being unpatentable over Bucky in view of Fitzsimmons and Despino as applied to claim 10, and further in view of Ferreira (U.S. Patent No. 3,304,683). As with the Despino reference, Ferreira does not disclose a staking device that is installed at least partially underground. As argued above, Applicant submits that Bucky in view of Fitzsimmons and Despino do not disclose everything previously mentioned and Ferreira does not disclose, teach or suggest any of the missing elements. There is no disclosure in the patent relating to the offset position of a lowermost stake and the provision of a strike plate directly above that lowermost stake to hammer the stake into the ground. Therefore, no addition of other features disclosed in this patent in combination with the other cited references will render claims 11 and 12 obvious. Applicant submits that claims 11 and 12 are dependent from an allowable base claim and are therefore also allowable.

The Examiner rejected claim 14 under 35 U.S.C. 103(a) as being unpatentable over Bukky. Claim 14 has been canceled in light of the rejection of the claim under 35 U.S.C. 112, second paragraph.

Applicant has added new claims 15-20 to more clearly define the offset relationship between the main anchor of the device and the receptacle that holds the end of the elongated spike. Applicant attaches marked-up Figures 1 and 2 to provide support for these new claims. With reference to claim 15, the stake support includes a base defined by members 28 and 30 (Fig. 2). The base has spaced-apart first and second ends - marked "A" and "B" respectively. A first spike 12 extends downwardly from the lower surface 30 at the first end "A" of the base. A second spike, labeled "X", extends downwardly from the lower surface 30 at the second end "B" of the base. A stake-retaining receptacle 42 extends upwardly from the upper surface 28 of the second end ("B") of the base.

With reference to claims 16 & 17, the base includes a platform 32 or "Y" that is formed at the first end "A" directly over the first spike 12. The convex shape of the platform is seen in Figs. 4, 5a and 5b.

With reference to claims 18 and 19, the upper and lower surfaces 28, 30 of the base are separated from each other by an intermediate section (marked Z). The curved extension 34 (Fig. 1) is integral with lower surface 30 and curves upwardly toward the upper surface 28. The relative height and thickness of the curved extension are best seen in Fig. 4.

With reference to claim 20, the base includes a support bracket 68 that extends between the first and second spikes 12 and "X". The support bracket 68 includes a V-

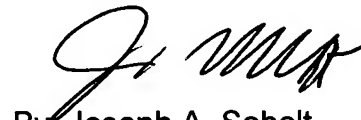
shaped notch 66.

Applicant respectfully requests reconsideration and allowance of claims 1-6 and 8-13 and consideration and allowance of new claims 15-20.

Should the Examiner wish to discuss any of the above matters, he is invited to contact the undersigned at (330) 244-1174.

Respectfully submitted at Canton, Ohio this 12TH day of JUNE, 2006.

SAND & SEBOLT


By: Joseph A. Sebolt
Reg. No. 35,352

Aegis Tower, Suite 1100
4940 Munson Street, NW
Canton, Ohio 44718-3615
Telephone: (330) 244-1174
Facsimile: (330) 244-1173
JAS/ff

Docket No. 1849012US1AP

Enclosures - Annotated Drawing Sheet 5
Replacement Sheet 5
Marked up drawing sheets 1 and 2

Annotated Marked Up Drawings



5/5

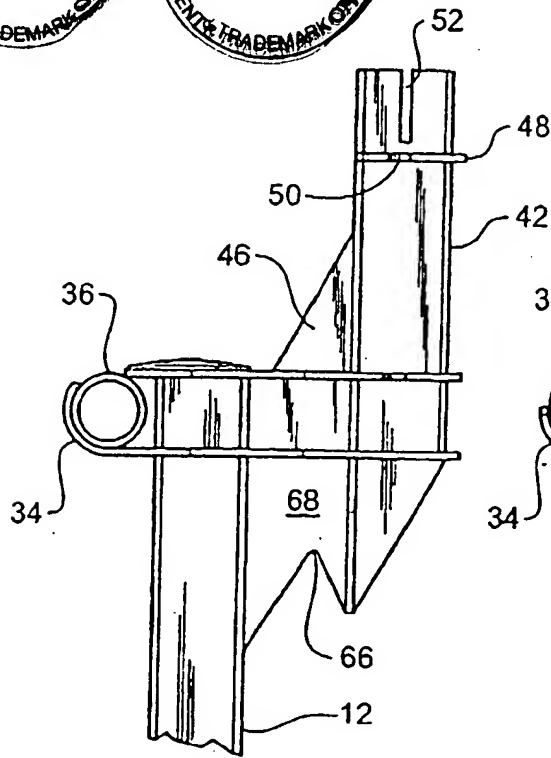


Fig 5a

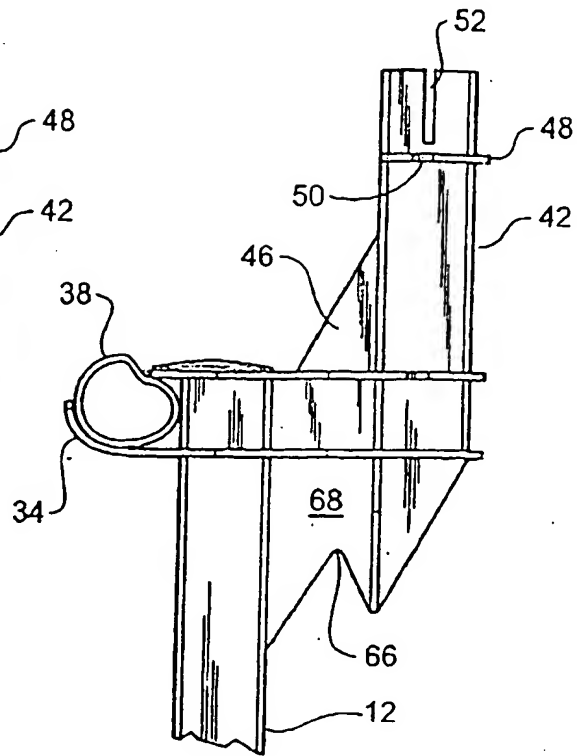


Fig 5b

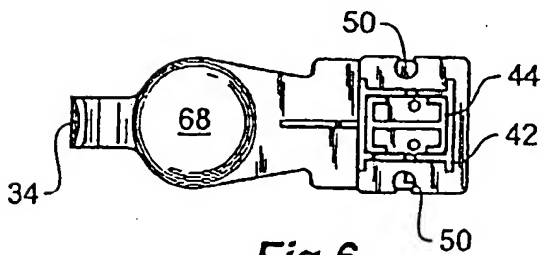


Fig 6

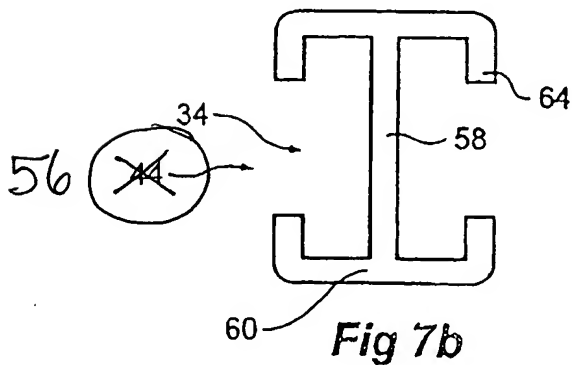


Fig 7b

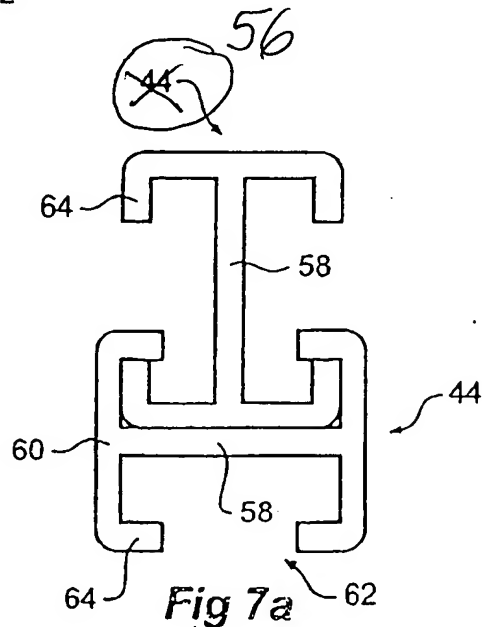


Fig 7a



Presented in
conjunction
with arguments
relating to
claims 15-20



Presented in conjunction
with arguments
relating to claims
15-20

